UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

SEP 0 5 2012

The Honorable Robert M. Summers, Ph.D.
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

Dear Secretary ~~Summers~~ Bob:

The Maryland Department of the Environment (MDE) adopted amendments to the State's Water Quality Standards (WQS) *Title 26 Department of the Environment Subtitle 08 Water Pollution 26.08.02 Water Quality* (Code of Maryland Regulations (COMAR) Title 26). The MDE published the Notice of Final Action to amend its WQS on January 13, 2012. These revisions were submitted by the MDE to the U.S. Environmental Protection Agency (EPA) as required under the Clean Water Act (CWA) Section 303(c)(2)(A), 33 U.S.C. §1313(c)(2)(A), and 40 CFR Part 131.20(c). The State of Maryland, MDE, and the Maryland Office of the Attorney General, certified in a letter dated March 23, 2012, that these revisions were duly adopted in accordance with Maryland's laws. EPA received this package on April 9, 2012.

EPA has completed its review of the revisions to Maryland's WQS. Based on the review of the MDE submission and supporting documentation, EPA finds that all of the new or revised provisions are consistent with the CWA and EPA's implementation regulations at 40 CFR 131. Specifically, the state has adequately demonstrated that "physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses" (40 C.F.R. 131.10(g)(5)). As you know, under the terms of Maryland's regulations regarding "restoration variances" (COMAR 26.08.01.01.01 Definitions) and consistent with the CWA requirement for triennial reviews of WQS, these variances are required to be reviewed at a minimum every three years, either in conjunction with Maryland's triennial review process, or as a separate procedure. The specific provisions EPA approved and the rationale for the approval can be found in the enclosure to this letter.

Although EPA is approving the revisions, these provisions are being approved subject to completion of the consultation under Section 7(a)(2) of the Endangered Species Act (ESA) with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NOAA Fisheries). Under Section 7(a)(2) of the ESA, 42 U.S.C. §1536, EPA has the obligation to determine if its approval of these modifications to Maryland's WQS regulation will adversely affect threatened and endangered species and their critical habitat in Maryland.

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If you have any questions, please do not hesitate to contact me or have your staff contact Mrs. Linda Miller, EPA's Maryland Liaison, at 215-814-2068.

Sincerely,

Shawn M. Garvin
Regional Administrator

Enclosure

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ENVIRONMENTAL PROTECTION AGENCY, REGION III
STATE OF MARYLAND WATER QUALITY STANDARDS
APPROVAL OF 2012 NEW AND REVISED ITEMS

Section Approved	Description of Revision	EPA Action and Rationale
COMAR 26.08.02.03-3C (8)(f)(iii) Criteria for Use II Waters	Move/Recodify the restoration variance for Lower Chester River Mesohaline (CHSMH)	Approval. The revision moves/relocates this segment from COMAR 26.08.02.03-3C (8)(e)(vii) to proper location COMAR 26.08.02.03-3C (8)(f)(iii) Criteria for Use II Waters, since it refers to the seasonal deep-channel refuge subcategory.
COMAR 26.08.02.03-3C (8)(f)(iii) Criteria for Use II Waters	Modify the dissolved oxygen restoration variance for Lower Chester River Mesohaline (CHSMH) allowing excursion from applicable DO criterion 16% instead of only 14% spatially and temporally	Approval. Monitoring, analysis and modeling by CBPO for 2010 Chesapeake Bay TMDL identified the need for this variance which meets the requirement of EPA regulations at 40 CFR 131.11, 131.13, and 131.10(g)(5) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses, and as noted in COMAR 26.08.02.03-3C (8) (g) and (h). Analysis demonstrates that this is the current highest attainable condition for this segment.
COMAR 26.08.02.03-3C (8)(f)(iv) Criteria for Use II Waters	New dissolved oxygen restoration variance for Eastern Bay Mesohaline (EASMH) section, allowing excursion from the applicable DO criterion 2% spatially and temporally	Approval. Monitoring, analysis and modeling by CBPO for 2010 Chesapeake Bay TMDL identified the need for this variance which meets the requirement of EPA regulations at 40 CFR 131.11, 131.13, and 131.10(g)(5) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses, and as noted in COMAR 26.08.02.03-3C (8) (g) and (h). Analysis demonstrates that this is the current highest attainable condition for this segment.

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